

MARK BRNOVICH, ATTORNEY GENERAL
STATE OF ARIZONA

MARIA M. SYMS (CA SBN 208427)
BRUNN W. ROYSDEN III (CA SBN 265810)
Assistant Attorneys General
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-8472
Facsimile: (602) 542-4377
Maria.Syms@azag.gov
Beau.Roysden@azag.gov

Attorneys for Proposed Amici Curiae

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL ABORTION FEDERATION (NAF),

Plaintiff,

v.

THE CENTER FOR MEDICAL PROGRESS,
BIOMAX PROCUREMENT SERVICES LLC,
DAVID DALEIDEN (aka "ROBERT SARKIS"),
AND TROY NEWMAN,

Defendants.

Case No. 3:15-cv-3522

Judge: Hon. William H. Orrick, III

**MOTION OF STATE ATTORNEYS
GENERAL FOR LEAVE TO PARTICIPATE
AS AMICI CURIAE**

Hearing Date: September 1, 2015

Time: 10:00 a.m.

Location: Courtroom 2, Floor 17

Date Action Filed: July 31, 2015

Trial Date:

The duly elected Attorneys General for the States of Alabama, Arizona, Michigan, and Oklahoma ("Proposed Amici") request leave of this Court to file the attached brief and to participate as *amici curiae* in any matters pertaining to the scope the Court's injunctive relief as it relates to Defendants' response to subpoenas or other requests from law enforcement. The Attorneys General are constitutional officers and the chief law enforcement officers of their respective states. They enforce their states' criminal and civil laws. Proposed Amici thus have an overriding interest in preserving their abilities to carry out their duties. To the extent that this Court's temporary restraining order (Dkt. Nos. 15, 27, and 34), or a subsequent preliminary or permanent injunction, were to enjoin or place conditions on the production of documents or testimony pursuant to a duly issued subpoena or other request, the

states' ability to carry out their duties is threatened. In addition, this case could create precedent for other cases far beyond the specific facts – and even industry – involved here. Without taking any position on the outcome or the merits of the underlying suit, Proposed Amici request leave to participate as *amici curiae*.

I. THIS COURT HAS AUTHORITY TO ACCEPT AMICUS BRIEFS AND PERMIT AMICI TO PARTICIPATE IN COURT PROCEEDINGS.

District Courts possess the inherent authority to allow the participation of *amici curiae*. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006); *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *United States v. Davis*, 180 F. Supp. 2d 797, 800 (E.D. La. 2001). Moreover, courts frequently welcome *amici* participation “concerning legal issues that have potential ramification beyond the parties directly involved or if the amicus has ‘unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide.’” *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (internal citations omitted); *see also Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003). A potential *amicus* “must merely make a showing that [its] participation is useful and otherwise desirable to the court” *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C-06-1254, 2007 WL 81911, at *3 (N.D. Cal. Jan 9, 2007) (internal citations and quotation marks omitted).

In two recent cases, this Court permitted the Federal Trade Commission to participate as *amicus curiae* based on its interest in enforcing the FTC Act, which is analogous to the some of the state laws that Proposed Amici enforce. *See Nwabueze v. AT&T, Inc.*, No. 3:09-cv-1529-SI, at Dkt. No. 227 (N.D. Cal. Sept. 25, 2013) (granting unopposed *amicus* application by FTC); *Moore v. Verizon Communications, Inc.*, Case No. 4:09-cv-1823-SBA, at Dkt. No. 140 (N.D. Cal. Aug. 23, 2012) (same). The role that Proposed Amici seek is well-established and proper.

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1 **II. PROPOSED AMICI WILL AID THE COURT IN UNDERSTANDING THE INTERESTS**
 2 **OF STATE ATTORNEYS GENERAL AND THE IMPACT OF A POTENTIAL RULING**
 3 **ON SEPARATE INVESTIGATIONS THAT HAVE BEEN COMMENCED OR MAY BE**
 4 **COMMENCED.**

5 In order to fulfill their duties, the Attorneys General need to be able to conduct meaningful
 6 investigations. Many states vest their Attorneys General with subpoena power. For example, the
 7 Arizona Attorney General has the power to require examinations under oath and to examine any
 8 merchandise, record, book, document, account or paper as he may deem necessary. Ariz. Rev. Stat.
 9 § 44-1524; *see also* Ariz. Rev. Stat. § 44-1526. Moreover, information obtained by the Attorney
 10 General is confidential under Arizona law. Ariz. Rev. Stat. § 44-1525. This is but one example. While
 11 the particularities of other states' laws may differ, the importance of the power to investigate efficiently
 12 is consistent.

13 Finally, the Attorneys General of the various states have been vigorous in protecting their rights
 14 to conduct investigations. For example, in the recent case of *Google, Inc. v. Hood*, **forty state Attorneys**
 15 **General** filed an amicus brief in the Fifth Circuit arguing against a cramped interpretation of *Younger*
 16 abstention that would permit a federal court to enjoin a subpoena related to a state consumer protection
 17 investigation. *See* Brief of Jack Conway, Attorney General of the Commonwealth of Kentucky, *et al.*,
 18 *Google, Inc. v. Hood*, No. 15-60205 (5th Cir., filed Jun 29, 2015). Thus, Plaintiff's contention that it is
 19 "blackletter law that investigations are not 'state judicial proceedings' and do not warrant abstention by
 20 federal courts" is simply wrong. (*See* Dkt. No. 89 at 8.) This is a major national issue that to counsel's
 21 knowledge has not been resolved in this circuit, and any ruling will have far-reaching implications
 22 beyond these parties, and even this industry.

23 **III. CONCLUSION**

24 For the foregoing reasons, Proposed Amici request leave of this Court to file the attached brief
 25 and to participate as *amici curiae* in any matters pertaining to the scope the Court's injunctive relief as it
 26 relates to Defendants' response to subpoenas or other requests from law enforcement.

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1 Dated: August 29, 2015

Respectfully submitted,

2 MARK BRNOVICH, ATTORNEY GENERAL
3 STATE OF ARIZONA

4 By: /s/ Maria M. Syms_____

5 MARIA M. SYMS
6 BRUNN W. ROYSDEN III
7 Assistant Attorneys General

Attorneys for Proposed Amici Curiae

8 **ALSO SUPPORTED BY:**

9 **Luther Strange**
10 **Alabama Attorney General**
11 501 Washington Ave.
12 Montgomery AL, 36130

13 **Attorney General Bill Schuette**
14 **State of Michigan**
15 525 West Ottawa St.
16 Lansing, MI 48909
17 (517) 373-1110

18 **E. Scott Pruitt**
19 **Attorney General of Oklahoma**
20 313 N.E. 21st Street
21 Oklahoma City, Oklahoma 73105-4894
22 (405) 521-3921
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I am a resident of the State of Arizona and over the age of 18 years, and I am not a party to this action. My business address is 1275 W. Washington St., Phoenix, AZ 85007. On August 29, 2015, I served the foregoing MOTION OF STATE ATTORNEYS GENERAL FOR LEAVE TO PARTICIPATE AS AMICI CURIAE by filing the document using the CM/ECF system, which will send a notice of electronic filing to:

Linda E. Shostak
Derek F. Foran
Christopher L. Robinson
Alexandra E. Laks
Lawrence J. Serrano
Nicholas S. Napolitan
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522
LShostak@mofo.com
Dforan@mofo.com
ChristopherRobinson@mofo.com
ALaks@mofo.com
JSerrano@mofo.com
NNapolitan@mofo.com

*Attorney for Plaintiff National Abortion
Federation*

Catherine W. Short
LIFE LEGAL DEFENSE FOUNDATION
Post Office Box 1313
Ojai, California 93024-1313
Tel: (707) 337-6880
LLDFOjai@earthlink.net

D. John Sauer
JAMES OTIS LAW GROUP, LLC
231 South Bemiston Ave., Suite 800
St. Louis, Missouri 63105
(314) 854-1372
jsauer@jamesotis.com

Thomas Brejcha
THOMAS MORE SOCIETY
19 La Salle St., Ste. 603
Chicago, IL 60603
(312) 782-1680
tbrejcha@thomasmoresociety.org

*Attorneys for Defendants The Center for
Medical Progress, Biomax Procurement
Services, LLC, and David Daleiden*

/s/ Brunn W. Roysden III

Brian R. Chavez-Ochoa
CHAVEZ-OCCHOA LAW OFFICES, INC.
4 Jean Street, Suite 4
Valley Springs, CA 95252
Tel: (209) 772-3013
Fax: (209) 772-3090
brianr@chavezocholaw.com

Jay Alan Sekulow
AMERICAN CENTER FOR LAW AND JUSTICE
201 Maryland Ave, NE
Washington, DC 20002
(202) 546-8890
sekulow@aclj.org

Abigail A Southerland
Carly F. Gammill
John Joseph Williams, Jr.
AMERICAN CENTER FOR LAW AND JUSTICE
188 Front Street, Suite 116-19
Franklin, TN 37179
615-419-3216
Fax: 615-599-5189
asoutherland@aclj.org
cgammill@aclj-dc.org
joseph.williams.24@gmail.com

Edward L. White , III
Erik Michael Zimmerman
AMERICAN CENTER FOR LAW AND JUSTICE
3001 Plymouth Road
Suite 203
Ann Arbor, MI 48105
734-680-8007
Fax: 734-680-8006
elwhite3@yahoo.com
ezimmerman@aclj.org

Vladimir Frank Kozina
MAYALL HURLEY, P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207
209-477-3833
Fax: 209-473-4818
vkozina@mayalllaw.com

Attorneys for Defendant Troy Newman